SETTLEMENT AGREEMENT, RELEASE OF ALL CLAIMS

Whereas, CAPAX Global [Capax], and the North Carolina Office of Information Technology Services [OITS] are parties to a contract for an enterprise e-mail archiving system known generally as Mimosa/Nearpoint.

Whereas, OITS issued RFP ITS-004456 and subsequently awarded a contract to Mimosa Systems, Inc. on or about November 20, 2009 for a term of five years. That contract was subsequently assigned with approval of OITS, and amended with approval of OITS resulting in a contract between CAPAX and OITS. The November 20, 2009 contract is incorporated by reference and remains fully in force.

Whereas, Beginning in 2015, a contract dispute arose between CAPAX and OITS. CAPAX believed that OITS increased the number of archived e-mail accounts in excess of the number licensed, and that OITS received maintenance and support of such without due compensation in accordance with the schedule of costs in the 2009 Contract. CAPAX alleged OTIS was in violation the software license and maintenance terms in the Contract, and that CAPAX was owed additional fees of approximately $773,536.

Whereas, OITS and CAPAX now wish with this Settlement Agreement and Release, [Agreement], to settle all existing claims and further agree to promptly execute an amendment to the contract to provide for the future delivery of services.

Now, therefore, in consideration of the covenants and promises herein contained, the parties enter into the following agreement.

1. No Admission. This Agreement is a compromise by both parties and shall not be construed as an admission by either party of wrongdoing of any kind.

2. Terms. Within ten (10) days of this Agreement being executed by the Parties, the Parties shall execute and deliver to each other an amendment to the Mimosa/Nearpoint Contract. OITS, upon receiving a proper invoice issued against such amendment, will pay CAPAX $343,593.48: which sum comprises Licensing Fees, maintenance and support in full satisfaction of 34,289 mailboxes in addition to 51,000 mailboxes which are not the subject of any dispute.

3. Release: Both OITS and CAPAX agree that this agreement settles all disputes between them that have accrued prior to the date of execution.

    a. CAPAX, for itself and its predecessors, successors, parents, affiliates, and assigns, and any of their officers, directors, employees and agents, hereby forever and irrevocably releases, acquits and discharges OITS and the State of North Carolina from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, compensation, third-party actions, suits at law or in equity, including any claims or suits for attorney's fees, interest and penalties, whether asserted individually or on behalf of others, whether arising under common law or statute, and whether arising under state or federal law, which have accrued or may accrue with respect to the fees for all periods prior to the Effective Date. CAPAX agrees that it

will not make, file, or pursue any claims, charges, or lawsuits against OITS with respect to the fees for all periods prior to the Effective Date.

b. CAPAX warrants and represents that it has not assigned or otherwise transferred or attempted to transfer either separately or collectively, any of the claims, demands, rights, actions, or causes of action released in this Agreement.

4. Construction of Agreement: This agreement shall be construed in accord with North Carolina Law. The situs for any contract disputes is Raleigh North Carolina, and the venue for any disputes is Wake County Superior Court.

5. Each party shall bear its own costs and attorney fees.

6. Entire Agreement: This Agreement, with attachments as noted above, contains the entire agreement between the parties. In the event that one or more of the provisions of this Agreement shall be held to be unenforceable, the Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable.

7. Execution of Agreement: For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The undersigned hereby represents and warrants that she/he has authority to enter into this binding agreement.

IN WITNESS WHEREOF, OITS and CAPAX have executed this Agreement on the date noted below.

Vendor:
CAPAX Global

BY: _____
Signer, Title

Thomas Leonard
Vice President Sales

capax discovery | capax global

_____
Date of Execution

Digitally signed by Tom Leonard Signature
DN: cn=Tom Leonard Signature, o, ou, email=tleonard@capaxglobal.com, c=US
Date: 2015.06.26 09:09:39 -04'00'

OITS:
Office of Information Technology Services

BY: CL CE, SCIO
Signer, Title

8.3.15
Date of Execution

AMENDMENT TO ITS-004456

This Amendment to the Email Archive System Contract, ITS-004456, dated November 17, 2009, by and between the State of North Carolina, Office of Information Technology Services (OITS) and CAPAX, Inc. is hereby made and entered into effective as of the last signature date below (the "Effective Date").

Whereas OITS issued RFP ITS-004456 and subsequently awarded a contract to Mimosa Systems, Inc. on or about November 20, 2009 for a term of five years.

Whereas, the contract was subsequently assigned with approval of OITS and amended with approval of OITS resulting in a contract between CAPAX and OITS. The Contract is incorporated by reference and remains fully in force except as modified by this Amendment.

Whereas CAPAX provides software maintenance, support and services pursuant to the 2009 Contract and subsequent amendments and the Contract term expires June 30, 2015.

Now, Therefore, in consideration of $343,593.48: which sum comprises Licensing Fees, maintenance and support in full satisfaction of 34,289 mailboxes in addition to 51,000 mailboxes which have been previously paid, and amicable resolution of a licensing fee, maintenance and support audit, the Parties agree to Amend the Contract as follows:

1. This Amendment will be governed by the Term and Conditions of ITS-004456 and associated Best and Final Offer (BAFO).
2. This Amendment shall take precedence over the Contract documents in the event of any conflict among the content thereof.
3. The term of the Email Archive System Contract is extended to 31 December 2015 for 85,289 mailboxes.

Except as amended herein, the Contract remains in full force and effect as written. This Amendment is executed by authorized officials as of the day and date indicated below.

Vendor:
CAPAX Global

BY: _____
Signer, Title

Thomas Leonard
Vice President Sales

capax discovery | capax global

Digitally signed by Tom Leonard Signature
DN: cn=Tom Leonard Signature, o, ou, email=tleonard@capaxglobal.com, c=US
Date: 2015.06.26 09:08:48 -04'00'

_____
Date of Executior

OITS:
Office of Information Technology Services

BY: _____, SCIO
Signer, Title

8.3.15
Date of Execution

Attachment A – Certification of Compliance With Executive Order # 24

The undersigned certifies, to the best of his or her knowledge and belief, that:

By Executive Order 24, issued by Governor Perdue, and N.C.G.S.§ 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

(1) have a contract with a governmental agency; or

(2) have performed under such a contract within the past year; or

(3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. § 133-32.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

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N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this Attachment and submitting a bid in response to the accompanying solicitation, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

TYPE OR PRINT NAME & TITLE OF PERSON SIGNING: Chris Estes, SCID	*E-MAIL:* chris.estes@nc.gov
AUTHORIZED SIGNATURE:	*DATE:* 8.3.15